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ever went out*
COPY

February 15, 1977

Mr. Harry M. Descoteau
Assistant State Treasurer
State House Annex
Concord, New Hampshire 03301

Dear Mr. Descoteau:

You have requested our opinion on the question whether individuals employed by the State on a temporary part-time or part-time basis are required to join the retirement system after the equivalent of six months of employment. It is our opinion that such part-time employees are not required to join the retirement system, but that the Board of Trustees may allow them to join.

RSA Chapter 100-A (Supp. 1975), establishing the New Hampshire Retirement System, provides that any "person who becomes an employee ... after the date of establishment shall become a member of the retirement system as a condition of employment." (emphasis added) RSA 100-A:3 (I) (Supp. 1975). "Employee" is further defined as "any regular classified or unclassified officer or employee of the state or any department ... of the state government...." (emphasis added) RSA 100-A:1 (V) (Supp. 1975). Viewing both sections together, it is clear that only "regular employees" are required to join the retirement system as a condition of their employment.

On the other hand, RSA 100-A:3 (III) (Supp. 1975) provides in pertinent part:

The board of trustees may, in its discretion, accept as members any class of employees ... who are

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serving on a temporary or other than per annum basis, and it may also, in its discretion, make optional with employees ... in any such class, their individual entrance into membership.
(emphasis added)

Reading RSA 100-A:3 (I) and (III) (Supp. 1975) together, it may reasonably be concluded that a person "serving on ... other than a per annum basis" is not a regular employee. A regular employee, for purposes of Chapter 100-A, is simply one serving on a per annum basis. Thus RSA 100-A:3 (I) (Supp. 1975) governs the membership of persons serving on a per annum basis, while RSA 100-A:3 (III) (Supp. 1975) applies to persons serving on other than a per annum basis.

It is our understanding that a part-time employee does not serve on a per annum basis. Classified part-time employees of the State serve on an hourly basis, while classified permanent employees serve on an annual basis and receive an annual salary therefor. See RSA 94:1-a and 99:1-a (Supp. 1975). Since part-time employees serve on other than a per annum basis, their membership in the retirement system is governed by RSA 100-A:3 (III) (Supp. 1975) and not by RSA 100-A:3 (I) (Supp. 1975).

It is therefore our opinion that part-time employees, regardless of how long they may serve, are not required to join the retirement system as a condition of their employment. The Board of Trustees may, however, permit them to join pursuant to RSA 100-A:3 (III) (Supp. 1975) either as a class or individually.

Yours sincerely,

David H. Souter
Attorney General

David W. Marshall
Attorney

DWM/rw